

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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Easter Unlimited, Inc. d/b/a Fun World,	:
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Plaintiff,	:
	:
-against-	:
	:
	<b><u>DECLARATION OF</u></b>
	<b><u>TONY GARDNER</u></b>
	:
Terry Rozier,	:
	:
Defendant.	:
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I, Tony Gardner, pursuant to 28 U.S.C. §1746, declares as follows:

1. I am the CEO of Alterian, Inc. (“Alterian”), a special-effects studio known for creating original masks, makeup, and special effects for horror films and other productions.
2. I submit this declaration to support Terry Rozier’s motion for summary judgment on all claims brought by the plaintiff, Easter Unlimited, Inc. (“Easter Unlimited”).
3. Among other things, I wish to state and demonstrate that Alterian – not Easter Unlimited – originally created the mask featured in the movie *Scream*.

**Alterian Studios**

4. I have been a mask, makeup and special-effects artist in Hollywood for nearly 40 years, and began creating iconic horror-film images and effects long before computer animation.

5. Among other early projects, I created zombie masks for Michael Jackson's *Thriller*, the unkempt Cousin It from *The Addams Family*, the villain in Sam Raimi's cult classic *Army of Darkness*, and the hordes of zombies in the *Zombieland* movies.

6. I founded Alterian thirty years ago with my wife and two like-minded young artists who loved horror movies, and our collaborative, enthusiastic approach helped our little shop become a go-to effects studio for horror-film masks, characters, and effects.

7. Today, Alterian and its artists are responsible for some of the most recognizable masks, monsters, and horror images in film. We have created a number of iconic masks for genre-defining movies, and our studio has been the subject of countless books, articles, and horror-film anthologies that recognize our role in shaping the genre's iconography.

8. We are particularly well-known for masks, both in and out of Hollywood. We have created masks and facial effects for other household-name projects, ranging from the Geico caveman to the masked French electropop duo, *Daft Punk*.

9. The documents attached as **Exhibits A-F and I** are true and correct copies of business records kept and used by Alterian Studios, Inc. in the course of its usual business.

10. I published the posts attached as **Exhibit G** on Alterian's social-media accounts. The attached posts are true and correct copies of the originals, and my factual statements are true.

11. I read the publications attached as **Exhibits H**. The statements attributed to the Alterian employees quoted in them are, based on my own personal knowledge, true and correct.

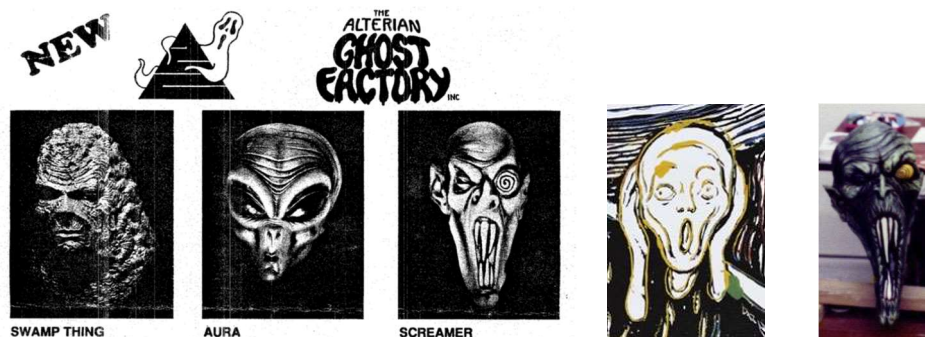
### **The Creation of the "Scream" Mask**

12. The creation of the mask featured in *Scream* can be traced back to October 31, 1990, when Alterian artist Loren Gitthens wore a ghost costume he made to a Halloween party.

13. By October 31, 1990, Loren had created his own original mask, inspired in part by Edvard Munch's famous painting, *The Scream*. He wore it to a costume party that night, and then hung it on the wall at our studio. We kept it there while we created Alterian's own line of Halloween masks, including the mask design that ended up in *Scream*. True and correct pictures of the costume Loren wore are attached as **Exhibit A**, and a cropped, brightened picture of it hanging at Alterian later in 1990 is reproduced here next to a cropped image of *The Scream*:



14. That ghost was one of two masks Loren did that year that invoked *The Scream*. That summer, Loren had sculpted "Screamer," a demon in Alterian's line of collector's masks, using features of *The Scream*'s iconic face (a long, distended jaw, sunken cheeks, high, extruded cheekbones, a gaping mouth, and staring eyes) to evoke the horror associated with that widely recognized visage on our menacing demon. True and correct copies of images depicting the Screamer are attached as **Exhibit B**, including those on either side of *The Scream* below:



15. Alterian was starting a Halloween-mask business, dissatisfied with the cheap, thin, and derivative masks available at drugstores. Most were flimsy copies of movie masks that

effects artists like us had originally created for films, and manufactured in cheap plastic by big companies abroad. We all shared a nostalgia for the Halloween masks we remembered having a blast with as kids—those oversized, thick, substantial masks that felt like they subsumed you into the character, not the small, flimsy masks they make today.

16. We used our time between projects at the end of 1990 to figure out what a Halloween-mask business would require, and the conclusion we came to was that the big mask companies were churning out the same basic designs, or pumping out copies of movie masks, and nobody in the costume industry was trying to do what we wanted to do. Chet's wife went to a few national holiday-costume trade shows at the end of 1990, and we confirmed that nobody was making the kinds of masks we wanted to make. Like Loren, we just had to make our own.

17. By the end of 1990, we had created six original ghost masks, using the same equipment and techniques we used for films. True and correct pictures of those masks are attached as **Exhibit C**, including the first version of a mask we refined and sold to households nationwide as the "Wailer" early in 1991, five years before our Wailer was depicted in *Scream*:



18. We had a more pressing reason to get into Halloween masks: we were nearly broke. At the time, Alterian was just a year old, with a shoestring budget in a little warehouse

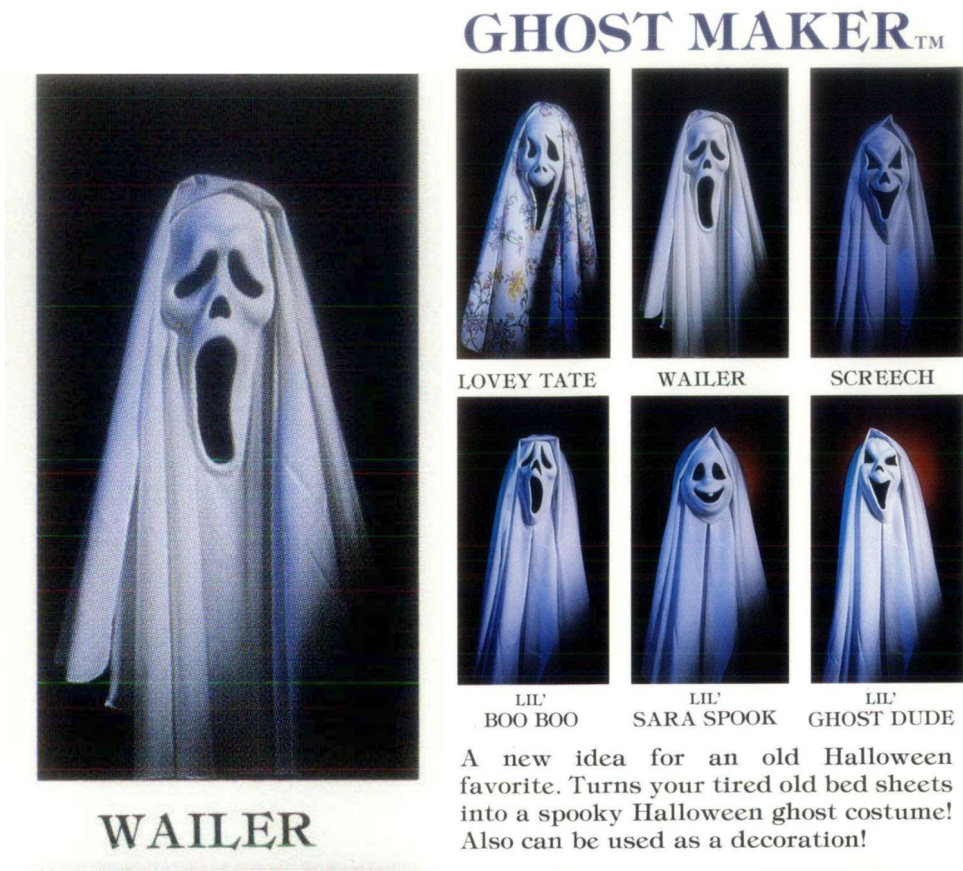
outside LA, and only three artists—myself, Chet Zar, and Loren Gitthens. Despite our youth, we had some major projects under our belts, and we were starting to attract bigger ones. But it was hard to keep the lights on in between, and the last few months of 1990 were lean.

19. So we decided to launch an Alterian Halloween-mask business. We knew from our film work that masks were better when they had stories, so we created an elaborate backstory for our masks: the ghosts were in the machines of an abandoned factory, which came to life at night to make our masks. We decided to call our business the Alterian Ghost Factory.

### **The Alterian Ghost Factory**

20. We registered the Alterian Ghost Factory, Inc. as a California retailer in the first week of 1991, and refined six original latex masks as well as our six initial ghosts to launch our first line of Halloween masks.

21. We decided not to sell complete costumes. We wanted people to experience the joy of creating their own macabre characters—the same joy that drew each of us to Hollywood. So we decided to release our ghosts as a line of DIY “Ghost Maker” costume kits. We made our masks in sturdy vacuform plastic, just like the movies, and we left them uncut, so the wearer could cut them out and affix a bedsheet to create the ghost’s flowing form, and customize it as they saw fit. True and correct images of our Ghost Maker kits and instructions are attached as **Exhibit D**, including our promotional inserts from the spring of 1991 depicting the “Wailer” Ghost Maker kit, the mask that would be featured in *Scream*:



22. By early spring in 1991, we were ready to debut our masks. We rented booths at all of the major national costume conventions, and planned elaborate installations to announce ourselves. We stretched our budget to commission a chugging, smoking “Ghost Factory” display from our set-design contacts that would draw conference attendees to our booth, and increase industry awareness of our new masks.

23. We presented our “Ghost Factory” at all of the major trade shows, stretching our budget to get power to our booths, and paying extra for generators. We treated it like we were making a movie: we did storyboards and concept art, hired a production company (and an on-site production assistant) to bring it to life. Loren and Chet (who managed the project) had to deal with the same logistical problems that come up on a location shoot. Images of the Ghost Factory display and our booths are attached as **Exhibit E**, including our concept art below:





24. The Ghost Factory premiered at the annual Chicago Halloween Toy and Trade Show in March 1991. The materials alone for our booth cost over \$1,500, a big number for us, and the labor included a scenic artist, a designer/fabricator, and a production assistant from Jack Phelps of Phelps & Cloud, who Alterian hired as a Director, DP, and Production Designer.

25. From 1991 to 1994, we went to every trade show we could, and it would have been impossible to miss us. We were the zaniest and youngest booth, and none of the conferences were huge. Plus, our “Ghost Factory” set turned out to be a real spectacle. Curiosity drew a lot of attention to our booth, even from attendees who didn’t order anything, and all of our masks and Ghost Maker kits were prominently displayed. We became notorious at trade shows as those artists in a sea of retailers, and it worked—we always came away with orders, and everyone saw our masks.

26. At the time, the biggest national expositions were run by three main companies, and attended largely by costume shops and wholesalers who did deals for new products. We hoped we could land a lucrative distribution deal, but ended up with lots of small individual orders instead.

27. Fun World/Easter Unlimited was one of the three major sponsors. They had employees at each national event, including at least one we attended early in 1991. But they never introduced themselves at our booth, or, as far as I know, sought to distribute our masks.

28. We had better luck with their competitor Rubie's Costume Company, another major sponsor that sent employees to the conferences we attended. Its CEO sent us a note in 1991, asking if we would design movie merchandise for a Cousin It doll in the Addams Family novelty line they had licensed. I don't think they knew I helped create the character of Cousin It for the "Addams Family" films, but our costs were too expensive for them.

29. Rubies did follow up with us again in September, with a question about another merchandize project, but never asked us about our Ghost Maker Masks. I've recently learned that Rubies is still selling a knock-off of our original Ghost Maker masks, though, so someone from their company knew about us.

30. Even without the big companies, our individual sales picked up immediately. Early in 1991, we had commissioned an elaborate painted advertisement in the leading horror-movie magazine, *Fangoria*, and had orders for our "Wailer" mask mailed in to us on the tear sheets we included with our ads by the end of March 1991. Original advertising art for our *Fangoria* advertisement, and some of our early orders, are attached as **Exhibit F**.

31. By the summer of 1991, we had fulfilled our first round of shipments, brokered a deal for better prices on supplies, and had a loan to expand our productions. By our second year in business, we sold 1,412 Ghost Maker kits—our most popular product category, accounting for 44% of show orders. By 1993, we informed our mailing list that our "ever popular ghost makers" would return again in March to the annual National Halloween and Costume Show in Chicago, which was now being held concurrently with another convention, the Transworld Party Show.



32. By 1994 or so, we were too busy with on-location movie effects to keep the Ghost Factory going, and we closed it down to take advantage of an opportunity to co-produce a genre film that we would be designing the title creature for.

***Scream***

33. In 1996, our mask appeared in *Scream*. I have since learned that Easter Unlimited licensed the mask for use in the film, though it was not Easter Unlimited's property to license.

34. According to the documentary that Wes Craven, *Scream*'s director, made about the making of the movie, he found the mask in an abandoned house in California, where we did the bulk of our sales. We marketed our Ghost Maker kits for ornamental use in the home, and some of our California customers even sent us pictures of our ghosts "haunting" their homes.

35. According to Mr. Craven, his production team spent months trying to find the company that made the mask, and finally reached Easter Island's CEO in New York, who claimed ownership of it. I have since learned that Easter Unlimited has been manufacturing a knock-off of the "Wailer" mask we created in China, and selling them in stores.

36. I have never taken action against Easter Unlimited. By the time I heard of them, I was too busy with original film projects to worry about an industry I'd left. But this is not the first time I have cleared the record.

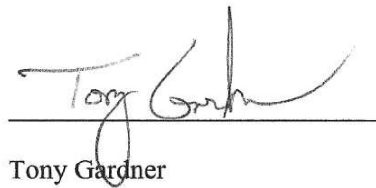
37. I have publicly recounted Alterian's creation of the so-called "*Scream*" mask, and consistently maintained, and in public statements, that Alterian originally created the mask Easter Unlimited now claims. Attached as **Exhibit G** are my social-media posts to that effect.

38. My Alterian colleagues from the Ghost Factory days have done so as well. Attached as **Exhibit H** are publications written by or quoting them to that effect.

39. Easter Unlimited never responded to or contradicted any of these statements. I did, however, receive a letter about them in 2003 from a lawyer who pieced it together. Easter had apparently brought a copyright action about the mask, and a UK solicitor asked if we made it first. A true and correct copy of that letter is attached as **Exhibit I**. I provided some of our records, and he was quite grateful, but I don't know what came of it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2020



Tony Gardner